IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 275 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

FATEHSINHJI GINNING PRESSING AND MFG CO LTD

Appearance:
MR BB NAIK with MANISH R BHATT for Petitioner
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 08/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions are referred for our opinion in respect of Assessment Year 1979-80 :-

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the sum of Rs.33,819/should be allowed to the assessee being the Government Subsidy ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee should be allowed depreciation on plant and machinery without excluding the amount of the Government subsidy from the costs thereof ?

2. As far as question No. 2 is concerned, the controversy raised herein is already concluded by our decision rendered today in Income-tax Reference No. 67 of 1985. We accordingly answer question No. 2 in the affirmative i.e in favour of the assessee and against the revenue.

3. As far as question No. 1 is concerned, the CIT (Appeals) as well as the Tribunal have held that the amount of subsidy received by the assessee from the Government was not a revenue receipt but was a capital receipt. There is no dispute about the fact that the assessee is a Company having its factory in Limbdi which is a declared backward area and that the scheme of Government subsidy provided for 15% compensation on the investment made by the assessee for establishing an industry in a backward area. While framing the assessment, the Assessing Officer was of the view that the subsidy received from the Government was of revenue nature. He, therefore, included the amount of subsidy in computing total income. As stated above, the CIT (Appeals) as well as the Tribunal held the subsidy to be of capital nature.

4. Considering the fact that subsidy was a one time payment made by the Government and was worked out on the basis of the investment made by the industry in its capital assets, we are of the view that the Tribunal was right in holding that the subsidy amount received by the assessee from the Government was a capital receipt and not a revenue receipt.

5. We may also note at this stage that in respect of Assessment Years 1976-77 and 1978-79, the same question -- whether the subsidy was a revenue receipt or a capital receipt -- had been raised before the CIT (Appeals) and the Tribunal and both the CIT (Appeals) and the Tribunal have held in respect of those assessment years that the subsidy amount received from the Government was a capital receipt. The judgment of the Tribunal in respect of those assessment years has not been challenged by the revenue before this Court although the question about actual cost to be calculated by including or excluding the subsidy amount received from the Government was raised before this Court and the same has already been answered as stated above.

6. In view of the above discussion, we answer question No. 1 in the affirmative i.e. in favour of the assessee and against the revenue.

7. The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-